THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION NO.11852 OF 2004

29.07.2005

Between

Smt.M.Kasturi Bai W/o late M.Rangadas

Aged about 54 years, Sweeper , E.C.I.L.

Canteen, E.C.No.114483, Hyderabad

..Petitioner

A n d

The Managing Director, Electronics Corporation of India

Limited, Hyderabad and Another

….Respondents

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WRIT PETITION NO.11852 OF 2004

ORDER:

The petitioner, who is working as a Sweeper in the Canteen with the respondent Corporation, filed this writ petition, *inter alia,* seeking for a writ of *Mandamus* declaring that the correct date of birth of the petitioner is 04.06.1950 as per the legal heir certificate and the declaration made before the VI Metropolitan

Magistrate, Hyderabad and consequently to hold that the petitioner is entitled to continue in service till she attains the age of superannuation of 60 years on 30.06.2010 with all consequential benefits holding the action of the respondents in seeking to retire the petitioner on 30.08.2005 on the basis of incorrect date of birth as 08.08.1945, is illegal.

2. Heard both sides.

3. The petitioner's main grievance centers around the allegations that her husband M.Rangadas, who was working as a Driver with the respondent Corporation, had expired while in service due to Blood Cancer, on 22.01.1990. Later, the petitioner was appointed on compassionate grounds as a Sweeper from 04.03.1991, and since then, she has been working without any complaint whatsoever. According to her, she was born on 04.06.1950 at Ramakrishnapuram, Rangareddy District, Hyderabad and she had filed legal heir certificate issued by the District Revenue Officer showing her age as 40 years and also filed C.A.No.48 of 1990 before the Administrator General of Andhra Pradesh for release of death benefits of her late husband, wherein she has shown her age as 40 years. At the time of her appointment, the record shows that her date of birth was 03.12.1951, but the same was struck down and shown as 08.08.1945, which is not in consonance with her actual date of birth, which is 04.06.1950. Therefore, on coming to know the same, she had requested the authorities to treat her date of birth as 4.6.1950 and made a representation to the Personal Manager, E.C.I.L., on 3.11.2003 along with sworn affidavit and other documents showing her date of birth as 04.06.1950 and not 08.08.1945. Further, it is pointed out that her brother Alimutu is working as Cook in Airforce, who was born on 28.5.1945. By any stretch of imagination, her date of birth cannot be 8.8.1945 and therefore, she is entitled to continue in service till the attainment of age of 60 years as per rules, based upon the correct date of birth. Thus, it is complained that the respondents are erroneously treating her date of birth as 8.8.1945 and trying to retire her by the end of August, 2005, which is totally illegal and the same is also not supported by any evidence and material. Hence, the writ petition.

4. In the counter affidavit filed on behalf of the respondents, the claim of the petitioner is totally denied and further, it is specifically pointed out that the date of birth of the petitioner was declared by herself and also by her husband as 8.8.1945 and the same has remained un disputed for the last more than 13 years and therefore, the present claim of the petitioner is hopelessly bald and belated one. In support, it is stated that the husband of the petitioner gave particulars on 27.8.1982 showing the date of birth of the petitioner as 8.8.1945. Even, the petitioner in her application dated 9.6.1990 seeking for appointment, has shown her date of birth as 8.8.1945. Further, attestation forms submitted to the personal group by the applicant duly endorsed by her also shows her date of birth as 8.8.1945 in all the three sets, and the same was filed on 04.03.1991. Even, in the joining report of the petitioner, she has stated that her date of birth is 8.8.1945. Even otherwise, the petitioner has accepted her date of birth as 8.8.1945 on various occasions, apart from aforesaid documents. The date of birth certificate issued by the Senior Personnel Officer dated 3.7.1991 at her request shows the date of birth of the petitioner as 8.8.1945 and the date of birth as was given in her application for Group Insurance, L.I.C again reiterates her date of birth as 8.8.1945, which was duly signed by the petitioner in English on 4.6.1992. That apart, the date of birth registered in the Declaration Form, Form No.1 submitted to ESIC for medical benefits for herself and for dependent family members filed on 2.7.1993, once again reiterates the date of birth of the petitioner as 8.8.1945, which was signed in English and accepted by the petitioner and the same was countersigned by the Assistant Personnel Officer, ECIL on 22.3.1993. The date of birth certificate issued by the Personnel Manager on 11.3.1999, was duly acknowledged by the petitioner without any objection. Even the Gratuity nomination signed by the petitioner herself in English, shows her date of birth as 8.8.1945. Even in the particulars for issuance of Identity Badge for Access Control-Cum-Attendance Recording system in the Corporation, which has been duly signed by the petitioner in English and endorsed by the Personnel Manager, the date of birth of the petitioner is shown as 8.8.1945. Therefore, it is stated that all along, the petitioner herself has accepted her date of birth as 8.8.1945 and therefore, the present claim is totally false and cannot be accepted. It is further pointed out that earlier, the petitioner was affixing her thumb impression, but subsequently she was able to read, write and sign in English. The petitioner's request for correction of her date of birth was immediately replied by letter dated 31.8.2001. Now, after lapse of two years, again she has filed the present writ petition.

5. It is also pointed out that as per the Standing Orders, any request for alteration of date of birth should be made within 5 years of joining in service of the Public Sector Unit, whereas the present application is filed after such a long period, far beyond the prescribed period and therefore, it is not maintainable. It is further stated that there are absolutely no grounds in the writ petition and the same is liable to be dismissed.

6. In the reply affidavit filed by the petitioner, there is again reiteration in regard to her date of birth not as 8.8.1945. She further submits that there is no reply in regard to the correction, which has been effected and therefore, her claim is liable to be admitted.

7. Having regard to the aforesaid submissions and on perusal of the material, the point which arises for consideration is as to whether the date of birth of the petitioner is 04.06.1950 and not 08.08.1945 as claimed and whether she is entitled to any relief as claimed?

8. Admittedly, there is no dispute in regard to the fact that the petitioner's husband while working with the respondent Corporation died due to Blood Cancer on 22.01.1990. Subsequently, the petitioner has been appointed as Sweeper on compassionate grounds on 4.3.1991 and since then, she has been working. There is also no serious dispute about the fact that her date of birth has been entered as 8.8.1945, whereas the petitioner claims that her correct date of birth is only 4.6.1950. The petitioner tried to rest her claim on the basis of legal heir certificate, which was issued by the District Revenue Officer and also C.A.No.48 of 1990 filed before the Administrator General of Andhra Pradesh.

9. Curiously, there is no denial to the various details pointed out on behalf of the respondents herein, in the counter affidavit in regard to the date of birth shown by her at various points of time since inception. The details of the applications filed by her and also the instances, where the petitioner has accepted her date of birth as 8.8.1945 have not been seriously challenged. From the aforesaid facts, it is quite

evident that the petitioner's date of birth is being shown by herself as 8.8.1945 alone all along. The attestation forms etc., filed by the petitioner reiterate the same fact. That apart, the petitioner obtained date of birth certificate from the office under due acknowledgment showing her date of birth as 8.8.1945. No doubt, she has filed a representation and the same was also rejected on 31.8.2001. Except making a sweeping allegation to show that her date of birth is otherwise than 8.8.45 as shown in the record, no proper explanation is forthcoming as to how and why the date of birth is being shown by herself as 8.8.45 and accepted at various points of time. These are all quite serious disputed facts, which cannot be gone into in a writ petition filed under Article 226 of the Constitution of India, more so, in the absence of any positive material in support and proper explanation for the mistake which has crept in. On the face of it and in view of the consistent entries and also the assertions made by the petitioner, it cannot be said that there is any mistake on the part of the respondents herein in showing the date of birth of the petitioner as 8.8.1945. In fact, the petitioner herself is responsible for showing her date of birth as 8.8.1945. The said fact cannot be denied from any angle.

10. In the above circumstances, it has to be held that the petitioner has failed to make out any case warranting interference by this Court in extraordinary jurisdiction under Article 226 of the Constitution of India. Hence, I do not find any merits in the writ petition and the same is liable to be dismissed.

11. The writ petition is accordingly dismissed. No costs.

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B.PRAKASH RAO, J

Dated: 29.07.2005

Note: Issue C.C in one week

(B/o)

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO.11852 OF 2004

(For pronouncement on 29.07.2005)